

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-10 NSAE-00 RSC-01 TRSE-00 XMB-07 OPIC-12

SPC-03 CIEP-02 LAB-06 SIL-01 OMB-01 STR-08 FTC-01

PA-04 PRS-01 USIA-15 DRC-01 /135 W

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R 061931Z MAR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 0909

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 03610

E.O. 11652: N/A

TAGS: ELAB, GW

SUBJECT: AMERICAN CHAMBER OF COMMERCE WORRIES ABOUT
CO-DETERMINATION LAW

REF: (A) BONN 01320, (B) BONN 01572

1. OTTO SCHOEPPLER, THE PROSPECTIVE PRESIDENT OF THE AMERICAN CHAMBER OF COMMERCE IN GERMANY, CALLED ON THE AMBASSADOR ON MARCH 4 TO VOICE THE CHAMBER'S CONCERN ABOUT THE PROPOSED LAW EXTENDING CO-DETERMINATION, PRACTICED SINCE 1951 IN THE COAL AND STEEL INDUSTRIES, TO FIRMS IN OTHER INDUSTRIES WITH MORE THAN 2,000 EMPLOYEES. LARGE GERMAN CORPORATIONS ARE GOVERNED BY TWO BOARDS: THE BOARD OF SUPERVISORS (AUFSICHTSRAETE) SETS GENERAL POLICY, AND THE BOARD OF MANAGEMENT (VORSTAND) IS RESPONSIBLE FOR THE OPERATION OF THE FIRM. THE PROPOSED LAW, NOW IN DRAFT (SEE REFTEL A FOR DETAILS) WOULD REQUIRE THAT STOCKHOLDERS AND WORKERS BE REPRESENTED EQUALLY ON THE BOARDS OF SUPERVISORS.

2. VARIOUS MEMBER FIRMS OF THE CHAMBER ARE, ACCORDING
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TO MR. SCHOEPPLER, VERY WORRIED THAT THE CO-DETERMINATION ARRANGEMENTS BEING PROPOSED WOULD DEPRIVE THEM

OF EFFECTIVE MANAGEMENT CONTROL OVER THEIR BUSINESS OPERATIONS. THE CHAMBER RETAINED A GERMAN LAW PROFESSOR (WENGLER, FREE UNIVERSITY, BERLIN) TO MAKE AN ANALYSIS OF THE PROPOSED LEGISLATION AND TO RENDER AN OPINION AS TO WHETHER US (AND PRESUMABLY OTHER FOREIGN) FIRMS WOULD HAVE ANY GROUNDS FOR OBJECTING UNDER THE TERMS OF EXISTING INTERNATIONAL AGREEMENTS GOVERNING THE CONDITIONS OF DOING BUSINESS IN GERMANY.

3. WENGLER'S PRELIMINARY MEMO CONCLUDES GENERALLY THAT CO-DETERMINATION MAY CONTRAVENE FRG MFN OBLIGATIONS UNDER A 1954 US-FRG FCN TREATY IN LIGHT OF FRG/LDS INVESTMENT PROTECTION TREATIES WHICH CONTAIN RECIPROCAL GUARANTEES. REPRESENTATIVES OF CHAMBER OF COMMERCE WERE INFORMED THAT THIS MEMO WAS TOO GENERAL TO BE OF MUCH USE AND THAT CLAIMED EFFECTS OF MITBESTIMMUNG AND RELEVANCE OF PRECISE LANGUAGE CONCERNING MFN AND INVESTMENT PROTECTION TREATIES WOULD NEED TO BE FULLY DEVELOPED BEFORE MERITS OF THIS ARGUMENT COULD BE DETERMINED. COPY OF ENGLISH TRANSLATION OF THIS MEMO BEING POUCHED TO ASSISTANT LEGAL ADVISER, L/EB.

4. WITH RESPECT TO THE INFORMAL SUGGESTION CONTAINED IN THE AFORE-MENTIONED ANALYSIS THAT THE CHAMBER SHOULD ASK THE US GOVERNMENT TO MAKE OFFICIAL REPRESENTATIONS PROTESTING THE MITBESTIMMUNG PROPOSAL, THE AMBASSADOR INDICATED CO-DETERMINATION HAS BEEN IN EFFECT FOR OVER 20 YEARS IN THE COAL AND STEEL INDUSTRIES AND HAS BEEN SUPPORTED IN PRINCIPLE BY ALL FRG POLITICAL PARTIES. FOR THIS REASON, SUCH A MOVE MIGHT BE COUNTER-PRODUCTIVE. ANY DECISION REGARDING SUCH REPRESENTATIONS COULD BE CONSIDERED ONLY

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AFTER REVIEWING A DETAILED LEGAL JUSTIFICATION FOR THE VIEW THAT CO-DETERMINATION CONTRAVENES SPECIFIC TREATY OBLIGATIONS. MR. SCHOEPLER ACKNOWLEDGED THAT THE ANALYSIS THUS FAR MADE FOR THE CHAMBER DOES NOT MEET THE REQUIREMENT OF PRESENTING A REASONED AND DOCUMENTED CASE.

5. MR. SCHOEPLER SAID THAT THE CHAMBER'S BOARD OF DIRECTORS WOULD PROBABLY TAKE THE FURTHER STEP OF COMMISSIONING A DETAILED LEGAL ANALYSIS IN SUCH FORM AS WOULD BE USABLE IN MAKING THE CHAMBER'S VIEWS IN OPPOSITION TO CO-DETERMINATION FORMALLY KNOWN TO THE FRG. IF THIS PLAN IS CARRIED OUT, THE CHAMBER WOULD PRESENT ITS VIEWS DIRECTLY TO APPROPRIATE FRG AUTHORITIES, AND WOULD SIMULTANEOUSLY FURNISH THE AMBASSADOR WITH A COPY OF THE LEGAL ANALYSIS AND STATEMENT OF PROTESTING VIEWS.

6. MR. SCHOEPLER INDICATED THAT THE CHAMBER WOULD PROBABLY SEEK SUPPORT FROM A NUMBER OF MULTINATIONAL CORPORATIONS WHICH OPERATE IN GERMANY AND HAVE THEIR
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HOME OFFICES IN COUNTRIES OTHER THAN THE US, E.G. UK, BELGIUM, THE NETHERLANDS, SWITZERLAND AND SWEDEN.

7. AT THE SAME MEETING MR. SCHOEPLER ALSO BROUGHT UP THE QUESTION OF PROPOSED GERMAN LEGISLATION TO ESTABLISHED PROFIT-SHARING ON CAPITAL ACCUMULATION ARRANGEMENTS FOR THE BENEFIT OF GERMAN WORKERS (VERMOEGENSBILDUNG) (SEE REF 2 FOR DETAILS). HE SAID THIS IS THE EQUIVALENT OF AN ADDITIONAL TAX AND STATED THAT SOME INDUSTRY ESTIMATES ARE THAT WITH THE INCEPTION OF THIS PLAN THE TOTAL CORPORATE TAX RATE IN GERMANY WOULD BE IN THE RANGE OF 70 TO 80 PERCENT. THE CONSENSUS DURING DISCUSSION WAS THAT VERMOEGENSBILDUNG WAS NOT AS IMMEDIATE A PROBLEM AS

MITBESTIMMUNG. THE AMERICAN CHAMBER WILL KEEP THIS
ISSUE UNDER REVIEW BUT HAS NO IMMEDIATE PLANS TO
MAKE ANY APPROACH TO THE FRG.
HILLENBRAND

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